



Town of Stow
PLANNING BOARD

380 Great Road
Stow, Massachusetts 01775
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Notice of Decision and Decision

April 12, 2011

**Highgrove Estates
Hammerhead Lot Special Permit,
Erosion Control and Sedimentation Special Permit
Site Plan Approval and
ANR Plan**

1. Petition

This document is the DECISION of the Stow Planning Board (hereinafter the Board) on the petition of Distinctive Acton Homes, Inc. (hereinafter the Petitioner) for property located off West Acton Road. This Decision is in response to a Petition for Approval of Hammerhead Lot and Erosion Control and Sedimentation Special Permits and Site Plan Approval as shown on an Approval under the Subdivision Control Plan (ANR) entitled "Plan of Land in Stow Massachusetts", dated October 6, 2010, prepared by Stamski and McNary, Inc., for Distinctive Acton Homes, Inc. and Plan entitled "Site Plan HIGHGROVE ESTATES, Stow, Massachusetts", dated October 6, 2010, prepared by Stamski and McNary, Inc., (hereinafter the Plan)

2. Petitioner

Distinctive Acton Homes, Inc.
P.O. Box 985
West Acton, MA 01720

3. Property Owner

The Sweeney Charitable
Remainder Unitrust
P.O. Box 1269
Onset, MA 02558

Liberty Square Realty Trust, u/d/t
P.O. Box 1269
Onset, MA 02558

Colonial Realty Trust
P.O. Box 1269
Onset, MA 02558

4. Location

Said property is shown on the Stow Property Map Sheet R-20 as Parcels 17, 19, 20, 21 & 22 (hereinafter, the Site).

5. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, the Board, on April 12, 2011, by a vote of 4 members, voted to **GRANT** the Hammerhead Lot and Erosion Control and Sedimentation Special Permits and Site Plan Approval subject to and with benefit of the following waivers and conditions.

6. Proceedings

The Petitioner presented the Petition to the Board at a duly noticed public hearing held on February 15, 2011. Upon assent of the Petitioner, the public hearing was continued to March 15, 2011, and was closed at the conclusion of the March 15, 2011 session. Board Members, Lori Clark, Ernest Dodd, Leonard Golder, Steve Quinn and Kathleen Willis were present throughout the proceedings. The record of proceedings and submissions upon which this decision is based, may be referred to in the Office of the Town Clerk or the Office of the Planning Board.

7. Exhibits

Submitted for the Board's deliberation were the following exhibits:

Exhibit 1 Plans

- a) ANR Plan, entitled "Plan of Land in Stow Massachusetts", dated October 6, 2010, prepared by Stamski and McNary, Inc.
- b) Plan entitled "Site Plan HIGHGROVE ESTATES, Stow, Massachusetts", dated October 6, 2010, prepared by Stamski and McNary, Inc., consisting of the following sheets:
 - Sheet 1 - Title Sheet
 - Sheets 2 & 3 - Site Development and Grading Plan
 - Sheets 4 & 5 - Plan and Profile
 - Sheets 6 & 7 - Construction Details
 - Sheets 8, 9 & 10 - Stormwater Pollution Prevention Plan
- c) Sketch Plan, submitted to the Board on March 15, 2011, showing proposed conservation restricted easements

Exhibit 2 Supplemental items and documents required by the Rules consisting of:

- a) Petition for Special Permit
- b) Special Permit Waiver Request
- c) Petition for Site Plan Approval
- d) Site Plan Approval Waiver Request
- e) Application for Endorsement of Plan Believed Not to Require Approval
- f) Extension Agreement for Endorsement of the Plan Not to Required Approval
- g) Petition for Erosion and Sedimentation Control Special Permit
- h) Erosion and Sedimentation Control Plan
- i) Certified List of Abutters (Stow & Acton)
- j) List of Other Permits and Variances

- k) Drainage Calculations
- l) Table 1. Water Resource Protection District
- a) Locus Plan
- b) Use Description
- c) Filing Fee

- Exhibit 3 Additional Information submitted by the Petitioner:
- a) Copy of Town of Acton Form ANR – for Lot A, Lot B & Lot C
 - b) Draft Legal Notice – Town of Stow Planning Board Public Hearing
 - c) Private Drive Covenant and Maintenance Agreement
 - d) Letter from Stamski and McNary, Inc. March 15, 2011 RE: Project Update
 - e) Email from Stamski and McNary, Inc. January 14, 2011 RE: Soil Logs

- Exhibit 4 Comments from the Board's Engineer Consultant
- a) Letter dated January 14, 2011 from Sue Carter P.E., Places Associates, Inc.

- Exhibit 5 Correspondence from Town Boards and Departments:
- a) Notice of Public Hearing for Notice of Intent, December 7, 2010, Conservation Commission
 - b) Interoffice Memorandum, December 14, 2010, Treasurer-Collector
 - c) Interoffice Memorandum, January 1, 2011, Board of Health
 - d) Interoffice Email, dated December 20, 2011, Stow Police Department
 - f) Interoffice Email, dated March 2, 2011, Conservation Commission

- Exhibit 6 Comments Received from Abutters:
- a) Email received July 7, 2010, Joseph Ianelli, 16 Woodchester Drive Acton, MA
 - b) Email received January 18, 2011, Joseph Ianelli, 16 Woodchester Drive Acton, MA
 - c) Letter and DVD received February 16, 2011, Bob Flynn, 315 West Acton Rd. Stow, MA
 - d) Letter received March 14, 2011, Charles Kern, 304 West Acton Rd. Stow, MA
 - e) CD received March 15, 2011, Jonathan Duprey, 3 Canterbury Rd. Stow, MA

- Exhibit 7 Other
- a) Special Permit Review Matrix (Zoning Bylaw) Prepared by Planning Board Member Ernest Dodd
 - b) Special Permit Review Matrix (Hammerhead lot, Erosion Control and Sedimentation) Prepared by Planning Board Member Ernest Dodd

Exhibits 1 and 2 are referred to herein as the "Plan".

8. Findings, Conclusions and Conditions

Based upon its review of the Petitions, exhibits, and the public hearings thereon, the Board makes the following findings and conclusions:

- 8.1 Finding:** The Site consists of 41.763 acres (3.19 acres in Acton and 38.573 acres in Stow) as shown on the Town of Stow Assessor's Map Sheet R-20 as Parcels 17, 19, 20, 21, and 22.

- 8.2 Finding:** The Site is located in the Residential District and the Water Resource Protection and Floodplain/Wetlands Overlay Districts.
- 8.3 Finding:** The proposed hammerhead lot residential use is allowed in the Residential District and is subject to restrictions and requirements of the Water Resource Protection and Floodplain/Wetlands Overlay Districts.
- 8.4 Finding:** The Site has existing frontage on West Acton Road and extends into the Town of Acton to the north, the Town of Stow Flagg Hill conservation land to the west and existing residential dwellings to the south and east. The frontage is located across from Canterbury Road, between 310 and 324 West Acton Road and between 324 West Acton Road and the Acton town line.
- 8.5 Finding:** The Plan as submitted, purports to be an Approval not Required Plan (ANR) under the Subdivision Control Law . The Board finds that the proposed development does not require approval under the Subdivision Control Law, as all proposed lots have the requisite frontage on West Acton Road.

The Petitioner granted a time extension from the twenty-one (21) day time period in which the Planning Board shall make a determination that the plan does not require approval and endorse the Plan to the time frame of one-hundred and fifty five days (155) days so that the Petition for Special Permits and Applications for Site Plan Approval may be considered concurrently. The Planning Board accepted the Petitioner's offer of said extension.

- 8.6 Finding:** The Plan shows the creation of five (5) lots ((one conventional lot (Lot 1) and four hammerhead lots (Lots 2 through 5) within the Town of Stow along West Acton Road. The remaining land in Stow towards the rear of the site will be combined with three conventional lots in Acton (one with frontage on Woodchester Drive and two with frontage on Windemere Drive).

Condition: As the conventional lot (Lot 1) includes a portion of the common drive and drainage system, it shall be subject to this Decision.

8.7 Hammerhead Lot Provisions

- 8.7.1 Finding:** The proposed hammerhead lots for residential use is a permitted use in the Residential District under Section 6.1 of the Zoning Bylaw.
- 8.7.2 Finding:** The proposed hammerhead lots, as conditioned herein, meet the requirements of Section 6.1 of the Zoning Bylaw.
- The proposed lots have frontage of at least 50 feet;
 - The proposed lots have an area of at least 180,000 square feet;
 - The proposed lots have sufficient area suitable for buildings;
 - The proposed lots have a minimum width of 50 feet between the street line and the buildable area;
 - The proposed lots meet the minimum width requirement

8.7.3 Condition: All buildings on the hammerhead lots shall be set back at least 40 feet from every property line;

8.7.4 Condition: The hammerhead lots shall not be further divided.

8.7.5 Condition: As the conventional lot (Lot 1) includes a portion of the common drive and drainage system, it is subject to this Decision and shall not be further divided or subdivided.

8.7.6 Finding: During the Public Hearing the Board noted that no information was provided in order for the Board to find that sufficient sight distance to permit safe access to the common drive exists.

Condition: Prior to endorsement of the Plan, the Petitioner shall provide documentation to show sufficient sight distance to permit safe access to the common drive, as required by Section 6.1.7 of the Zoning Bylaw.

8.8 Common Driveway Provisions

8.8.1 Finding: The proposed four (4) hammerhead lots and one (1) conventional lot will be served by a common driveway.

8.8.2 Finding: The proposed common driveway, as conditioned herein, meets the requirements of the Bylaw.

8.8.3 Finding: As this common driveway will be functioning like a road, the Board's Consulting Engineer recommends that the binder course sit through one winter prior to the installation of the finish course and that a tack coat should be required between the binders and finish course.

Condition: The binder course shall sit through one winter prior to the installation of the finish course and a tack coat shall be used between the binders and finish course.

8.8.4 Finding: Due to the high potential for erosion, the Board's Consulting Engineer Recommends that all drainage structures be fully functional at the binder course requiring rim adjustments for the finish paving. As the berm is an integral part of controlling the runoff and is needed to protect the shoulders from erosion, a berm (temporary or permanent) should be installed immediately after the binder course.

Condition: All drainage structures shall be fully functional at the binder course requiring rim adjustments for the finish paving.

Condition: A berm (temporary or permanent) shall be installed immediately after the binder course.

8.8.5 Finding: The Plan show bituminous concrete curbing. As this common driveway will be functioning like a road, the Board finds that sloped granite curbing is appropriate where the common drive intersects with West Acton Road.

Plan Modification: The Plan shall be modified to show sloped granite curbs at the point of intersection with the existing road for the distance of the arcs of the curve plus a straight section at each end of at least eight feet (8') in length in accordance with Section 8.6.1 of the Subdivision Rules and Regulations.

- 8.8.6 Finding:** Section 9.3.11.8 of the Bylaw requires that electric, telephone, natural gas, cable television and other such utilities and services shall be underground.

Condition: Electric, telephone, natural gas, cable television and other such utilities and services shall be underground.

- 8.8.7 Finding:** The horizontal and vertical alignment of the driveway makes the access difficult under winter conditions. During the Public Hearing the Board discussed the need for a pull off/parking area be created adjacent to West Acton Road for resident's vehicles in the event that the driveway is impassible so that they will not create a hazard on West Acton Road. This area could also serve as a parking area for vehicles waiting for the school bus, as recommended by the Police Department. The Petitioner's Engineer responded that there is adequate space for one (1) vehicle to park. The Board finds there is sufficient area for two (2) vehicles to park.

Finding: During the Public Hearing an abutter noted concern that an alternative emergency access to the Town of Acton is not proposed, given the steep slope and narrow width of the common drive. The Fire Chief reported that he does not see the need for an alternate emergency access.

Finding: The Petitioner's Engineer noted that a typical fire truck would be able to make the point template and that the drive was in compliance with the Town's slope and width regulations.

Finding: The Fire Chief voiced no objection to the proposed 12-foot width of the common drive, but requested adequate room in the shoulder to accommodate snow storage. The Board finds there is adequate room in the shoulders to accommodate snow storage.

- 8.8.8 Finding:** The Fire Chief requested that a fire cistern be located in the cul-de-sac to the side of the island for easier access and that the Homeowner's Association be responsible for keeping access clear of snow. The Petitioner agreed to locate a cistern within the cul-de-sac, as requested.

Plan Modification: The Plan shall be modified to show a fire cistern within the cul-de-sac meeting the requirements of the Stow Fire Department Specification and Requirements. Specific location and design shall be approved by the Fire Department.

Condition: The Homeowner's Association shall be responsible to maintain a clear access to the cistern at all times and such responsibility shall be noted in the Common Drive Covenant, Maintenance Agreement, Homeowners Association documents and the deed for each lot.

- 8.8.9 Finding:** The Fire Chief requested the street numbers be visible at the entrance of the Common Driveway and that the number start after 324.

Condition: The street numbers shall be clearly visible at the entrance of the common drive and the numbers shall start after 324.

8.8.10 Finding: During the Public Hearing an abutter voice concern about the potential for de-icing chemicals to be used on the private drive, as the runoff will eventually flow into the wetlands.

Condition: An environmentally friendly no-salt alternative, approved by the Board and the Conservation Commission, shall be used. Such alternative shall be noted in the Common Drive Covenant, Maintenance Agreement, Homeowners Association documents and the deed for each lot.

8.8.11 Finding: During the Public Hearing, a resident requested a guardrail be installed across from the entrance of the Site on West Acton Road to prevent vehicles from driving across West Acton Road onto his property during ice conditions. The Petitioner's Engineer noted that there is a leveling area at the base of the common drive to prevent this from happening. However, the Petitioner agreed to provide a metal guardrail on West Acton Road across from the entrance of the Site, if the Board finds it necessary.

Finding: The Board accepts the Petitioner's offer to install a guardrail on West Acton Road across from the entrance of the Site, subject to the approval of the Superintendent of Streets.

Condition: A metal guardrail shall be installed on West Acton Road across from the entrance of the Site subject to the approval of the Superintendent of Streets.

8.8.12 Condition: Use of the common drive by vehicle traffic shall be limited to ingress and egress and access to the fire cistern, and does not include the parking of vehicles on the common drive, except that occasional overflow parking of guests' vehicles shall be permitted, provided that such vehicles are parked in a manner that does not impede traffic flow and that such parking does not extend overnight. Such limitations shall be contained within the Common Drive Covenant, Maintenance Agreement, and Homeowners' Association documents and within the deed for each lot.

8.8.13 Condition: The owners of the lots shall bear and have joint and several responsibilities and obligations for the repair, maintenance, reconstruction and snowplowing of the common drive, so as to provide continuous year-round access for vehicle traffic for the convenience of the owners of the lots, and to provide continuous year-round access to the fire cistern and for all emergency, fire, rescue, police, moving, construction and maintenance vehicles. Such responsibilities shall contained in the Common Drive Covenant, Maintenance Agreement, and Homeowners' Association documents and within the deed for each lot.

8.9 Waivers

The Petitioner requested waivers from the requirements of the Rules and Regulations for Special Permits and the Rules and Regulations for Site Plan Approval (hereinafter the Rules).

8.9.1.1 Finding: The Petitioner requested a waiver from the requirements of Section 4.1.2 a) (Development Impact Statement) of the Rules. The Board Finds that the information required in a Development Impact Statement should be on record.

Waiver: The Board **DENIES** the requested waiver from the requirements of Section 4.1.2 a) (Development Impact Statement) of the Rules.

Condition: Prior to endorsement of the Plan, the Petitioner shall provide a Development Impact Statement.

8.9.1.2 Finding: The Petitioner requested a waiver from the requirements of Section 4.1.2 e) (Landscape Plan) of the Rules. The Board finds that there is no need for a Landscape Plan as the Plan includes several restricted areas to minimize disturbance and several restricted areas to be retained in their natural state.

Waiver: The Board **GRANTS** a waiver from the requirement for a Landscape Plan for each hammerhead lot, as required by of Section 4.1.2 e) of the Rules.

8.9.1.3 Finding: The Petitioner requested a waiver from the requirements of Section 4.1.2 f) (Building Elevation Plan) of the Rules. Board finds that there is no need for a Building Elevation Plan for each hammerhead lot, as the development is limited to residential use, which does not warrant the need for review of building elevations. The Building Commission will review building elevations as part of Building Permit Application(s).

Waiver: The Board **GRANTS** a waiver from the requirement for a Building Elevation Plan for each Hammerhead lot, as required by Section 4.1.2.f) of the Rules.

8.9.1.4 Finding: The Petitioner requested a waiver from the requirements of Section 4.1.2 g) (Floor Plan) of the Rules. The Board finds there is no need for a Floor Plan for each hammerhead lot, as the development is limited to residential use, which does not warrant the need for review of floor plans. The Building Commission will review floor plans as part of Building Permit Application(s).

Waiver: The Board **GRANTS** a waiver from the requirement for a Floor Plan for each Hammerhead lot, as required by Section 4.1.2.f) of the Rules.

8.9.1.5 Finding: The Petitioner requested a waiver from the requirements of Section 4.14 (Earth Removal Calculations) of the Rules. The Board finds there is no need for earth removal calculations as no earth removal is proposed.

Condition: There shall be no earth removal from the site.

Waiver: The Board **GRANTS** a waiver from the requirement for earth removal calculations, as required by Section 4.14 of the Rules.

8.9.1.6 Finding: The Petitioner requested a waiver from the requirements of Section 4.15 (Traffic Study) of the Rules. The Board finds there is no need for a traffic study, as the development is limited to 5 residential lots.

Waiver: The Board **GRANTS** a waiver from the requirement for a traffic study, as required by Section 4.15 of the Rules.

8.10 Drainage

8.10.1 Finding: The Board finds the proposed development, as conditioned herein, meets the requirements of Section 3.8.1.9 of the Zoning Bylaw.

8.10.2 Condition: Pre-development surface water runoff rates and volumes shall not be increased.

8.10.3 Condition: Pre-development erosion and sedimentation rates shall not be increased.

8.10.4 Finding: Basin 2B and 3A-1 are located upgradient of the proposed common driveway with the emergency overflow directed towards the common drive. The Board's Consulting Engineer recommended that any emergency overflow be directed into a swale and piped under the driveway to protect the integrity of the driveway and shoulders in an extreme event including during construction.

Plan Modification: The plan shall be modified to show emergency overflow directed into a swale and piped under the driveway to protect the integrity of the driveway and shoulders in an extreme event including during construction.

Plan Modification: The Plan shall be modified to show that all outlet pipes from the infiltration basins have anti-seep collars.

8.10.5 Finding: The Board's Consulting Engineer recommended that, due to the potential for high velocities on site, calculations should include the velocities at all outlets, level spreaders and drainage swales and that all rip rap should be sized appropriate to the velocities.

Condition: Drainage calculations shall be modified to include the velocities at all outlets, level spreaders and drainage swales and that all rip rap should be sized appropriate to the velocities.

8.10.6 Finding: Specifications for the size of riprap are not shown on the Plan.

Plan Modification: The Plan shall be modified to specify heavy-duty riprap on the down slope side of the two wetlands crossings.

8.10.7 Finding: The drainage system and overall site stability relies heavily on the Operation and Maintenance (O & M) of the stormwater system. These operations will be the responsibility of the Homeowners' Association.

Plan Modification: The O & M plan shall be augmented to be easily understood by a layperson, including guidance as to acceptable methods for removing sediment, disposal of sediment and what constitutes erosion, requiring remediation.

Condition: The O & M plan shall be attached to the Homeowners' Association documents and referred to in each deed.

8.10.8 Finding: During the Public Hearing the Board expressed concern about long-term maintenance of the drainage system and erosion control and the ability for a small Homeowners' Association to fund maintenance and/or repair of the system in an emergency situation. The Petitioner agreed to establish an escrow account for maintenance/repair of the drainage system and erosion control.

Condition: The Homeowners' Association shall maintain an escrow account for maintenance/repair of the drainage system and erosion control. Prior to issuance of the first Building Permit, an estimate for the amount of the escrow account to be maintained in perpetuity shall be submitted for review and approval by the Board. Prior to issuance of the first occupancy permit, an escrow account shall be established in the amount approved by the Board. If, at anytime, the escrow account required by this condition falls below the amount so specified for a period greater than forty-five (45) days, the Planning Board may, without approval of the Homeowners' Association, rescind this special permit pursuant to the procedural due process requirements of G.L. c.40A, s.9

8.10.9 Finding: During the Public Hearing abutters noted and provided documentation indicating that the existing run off from the site is problematic and that the existing West Acton Road drainage system is inadequate. The Petitioner offered to work in collaboration with the Superintendent of Streets and provide assistance in upgrading the existing West Acton Road drainage system by providing and installing two (2) drainage structures and installation of not more than 100 feet of drainage pipe to be provided by the Town.

Finding: The Board accepts the Petitioner's offer to work with in collaboration with the Superintendent of Streets and provide assistance in upgrading the existing West Acton Road drainage system by providing and installing two (2) drainage structures and installation of not more than 100 feet of drainage pipe to be provided by the Town. The Board offered to facilitate an initial meeting with the Superintendent of Streets.

Condition: The Petitioner shall work in collaboration with the Superintendent of Streets and provide assistance in upgrading the existing West Acton Road drainage system by providing and installing two (2) drainage structures and installation of not more than 100 feet of drainage pipe to be provided by the Town; or equivalent cost of material and/or services as agreed upon by the Superintendent of Streets.

8.11 Erosion Control

8.11.1 Finding: The Board finds the proposed development will result in SLOPES of twenty-five percent (25%) or greater on fifty percent (50%) or more of the LOT area or on thirty-two thousand (32,000) square feet or more on a single parcel and therefore requires a Special Permit in accordance with Section 3.8.1.10 of the Zoning Bylaw.

8.11.2 Finding: The proposed Erosion Control and Sedimentation Special Permit Petition, as conditioned herein, meets the requirements of the Bylaw.

8.11.3 Finding: The Board finds that, as conditioned herein, adequate provisions have been made to protect against erosion, soil instability, and uncontrolled degradation.

8.11.4 Condition: All slopes exceeding fifteen percent (15%) resulting from site grading shall be covered with topsoil to a depth of at least six inches and planted with vegetative cover sufficient to prevent erosion.

8.11.5 Condition: Run-off shall be controlled, erosion prevented and either a constructed surface or cover vegetation shall be provided not later than the first full spring season immediately following completion of the stripping operation. No stripped area(s) shall remain through the winter without temporary cover of winter rye or similar plant material being provided for soil control.

8.11.6 Condition: Hillside areas shall be retained with vegetative cover as follows:

Average Slope	Minimum % of Land to Remain in Vegetation
10.0 - 14.9	25
15.0 - 19.9	40
20.0 - 24.9	55
25.0 - 29.9	70
30.0 +	85

8.11.7 Condition: A copy of the Stormwater Pollution Prevention Plan (SWPP) and the Notice of Intent filed with the Environmental Protection Agency (EPA) under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Planning Board, the Conservation Commission and the Building Commissioner. Prior to the commencement of any on-site work, the Petitioner shall have applied for and received approval from, the US EPA in regard to its NPDES permit.

8.12 Water Resource Protection District

8.12.1 Finding: The proposed dwellings, septic systems, private driveways and portions of the common driveway are located within the Water Resource Protection District.

8.12.2 Condition – This Special Permit is limited to the proposed residential use and is subject to the restrictions set forth in Section 5.2.1.1 of the Zoning Bylaw.

8.12.3 Finding: The Board finds that the proposed use, as conditioned herein, is permitted in the Water Resource Protection District under section 5.2 of the Zoning Bylaw.

8.12.4 Finding: The Board finds that the proposed development will not generate on-site sewage disposal exceeding 110 gallons per day per 10,000 square feet of the Lot area within the Water Resource Overlay District. (Section 5.1.1.8 of the Zoning Bylaw)

Condition – The proposed development shall not generate on-site sewage disposal exceeding 110 gallons per day per 10,000 square feet of LOT area.

8.12.5 Finding: The Board finds that the proposed development will not render impervious, by any means, more than ten percent (10%) of the Lot area proposed for development within the overlay district. (Section 5.1.1.8 of the Zoning Bylaw)

Condition: the proposed development shall not render impervious, by any means, more than ten percent (10%) of the Lot area proposed for development within the overlay district.

8.12.6 Finding: The Board makes the mandatory findings as required by Section 5.2.4 of the Zoning Bylaw. The Board finds that the proposed development, as conditioned herein:

- Meets the purpose and intent of this Bylaw and will not derogate from the purpose of the Water Resource Protection District;
- Satisfies the requirements for design set forth in Section 5.2.5 of the Zoning Bylaw; and
- Will not, during construction or thereafter, impair existing GROUND WATER quality or reduce existing recharge capacity beyond that allowed in Section 5.2.1.1.8 of the Zoning Bylaw; and
- Will not adversely affect the quality or the yield of an existing or potential GROUND WATER supply.

8.12.7 Finding: The site has a very high potential for erosion due to the existing steep grades and soils. The Planning Board's Consulting Engineer recommends that a preconstruction meeting with the developer/contractor, representatives of the Planning Board and Conservation Commission and the Building Inspector to review the provisions in place for erosion control and emergency situations. Petitioner's Engineer stated he and the Petitioner will meet with the Board's Consulting Engineer consistently throughout the project.

Condition: Prior to commencement of any work, a preconstruction meeting with the developer/contractor, representatives of the Planning Board and/or its Consulting Engineer, Conservation Commission and the Building Inspector to review the provisions in place for erosion control and emergency situations.

Condition: In the case of any lots to be developed independent of the Petitioner his successors or assigns, a similar meeting shall be held with the developer/builder.

8.12.8 Finding: During the Public Hearing, The Petitioner's Engineer stated that the site will be developed in phases, stabilizing the shoulders on the drive as they work their way into the site.

Plan Modification: The Stormwater Pollution Prevention Plan shall identify staging areas for the construction of the driveway and drainage facilities.

Plan Modification: The Stormwater Pollution Prevention Plan shall show additional intermediary erosion control barriers in order to minimize the amount of disturbed area tributary to the barriers. Barriers should be indicated at the toe of any of the 3:1 slopes, including the infiltration basins.

8.12.9 Finding: The Board's Consulting Engineer recommended that consideration should be given to using stump grindings on the steep slopes if grading occurs outside of the normal growing season or if the seeding will be delayed due to weather.

Condition: Stump grindings shall be used on steep slopes if grading occurs outside the normal growing season of it the seeding will be delayed due to weather.

8.13 Open Space Restrictions

8.13.1 Finding: The site is located adjacent to Flagg Hill Conservation Area and includes several vernal pools located within a large wetland area. The Conservation Commission requested that a wildlife corridor and wetland buffers between these two areas be protected as open space through the use of perpetual deed restrictions, which the Petitioner agreed to ipose prior to the sale of the lots. The areas to remain undisturbed and be protected by these restrictions are shown on a sketch plan submitted to the Board on March 15, 2011. The Petitioner agreed to provide an additional deed restriction on lots 4 and 5, below Common Driveway Easement A, providing a buffer to the existing homes at 310 and 304 West Acton Road. The deed restrictions will also require that these areas remain undisturbed and shall give the Conservation Commission the right to re-record the restrictions in order to ensure their enforceability.

Finding: The Petitioner agreed to install granite markers to permanently define the deed restriction areas.

Plan Modification: The Plan shall be modified to show the location of deed restricted areas as requested by the Conservation Commission and an additional deed restricted area providing a buffer to the existing homes at 310 and 304 West Acton Road below Common Driveway Easement A. The Plan shall also show location for granite bounds to define the limits of the deed restrictions.

Condition: All restriction easement areas shall remain in their natural condition.

Condition: Prior to either the conveyance of any individual lot or the issuance of a building permit (whichever occurs first), the petitioner shall submit to the Board and the Conservation Commission proposed deed restriction language, restricting the use of the deed restricted areas for the longest period of time permitted by law, which meets the requirements of this decision. Upon approval by the Board and the Conservation Commission the restrictions shall be recorded at the Middlesex County Registry of Deeds and proof of recording shall be provided to the Board and the Conservation Commission. No building permit shall be issued and no lot shall be conveyed until proof of recording is provided.

8.14 Covenants, Restrictions and Deeds

8.14.1 Condition: Prior to issuance of the first building permit a restriction or covenant to run with the land shall be submitted to and approved by the Board to assure compliance with the provision that the owners of the lots shall bear and have joint and several responsibilities and obligations for:

- the repair, maintenance, reconstruction and snowplowing of the common drive, so as to provide continuous year-round access for vehicle traffic for the convenience of the owners of the lots, and to provide continuous year-round access for all emergency, fire, rescue, police, moving, construction and maintenance vehicles;
 - Such assurance shall include the use of an environmentally friendly no-salt alternative, approved by the Board and the Conservation Commission, shall be used
- the repair, maintenance, reconstruction of the drainage system;
- erosion control measures; and
- maintenance and access to the fire cistern

Such assurance shall be noted in the Common Drive Covenant, Maintenance Agreement, Homeowners' Association documents and the deed for each lot.

8.14.2 Condition: Homeowners' Association documents and deed for each lot shall include reference to the restrictive easements and of the homeowners' joint responsibility for the common drive, drainage system, erosion control and fire cistern.

8.15 Performance Guarantee

8.15.1 Condition: The applicant shall agree to complete the required improvements specified on the approved plan. Such construction and installation shall be secured by:

- 1) a restrictive covenant which has been approved by the Board, executed and duly recorded by the owner of record, running with the land, whereby the common drive, drainage system, erosion control and fire cistern shall be provided to serve any lot before such lot may be built upon, or
- 2) another form of security, as defined in Section 5 of the Subdivision Rules and Regulations, has been provided in an amount sufficient in the sole opinion of the Planning Board, to secure construction of the common drive and associated services in accordance with the Plan.

8.15.2 Condition: Prior to issuance of the first occupancy permit, the Applicant shall provide the Board with a Performance Guarantee for purposes of insuring the long term maintenance of the common drive, drainage system, erosion control and fire cistern as shown on the approved plans. No release of this performance guarantee or any portion thereof, shall made unless and until the Planning Board, in its sole opinion, concludes that sufficient funds have been set aside for the perpetual maintenance of the common drive, drainage system, erosion control and fire cistern.

8.15.3 Condition: Prior to issuance of the first Building Permit, and notwithstanding condition 8.14.1 above, the Petitioner shall provide the Board with draft documentation that the homeowners association established pursuant to condition 8.13 above, will have sufficient funds and appropriate legal mechanisms to insure the perpetual maintenance of the common drive, drainage system, erosion control and fire cistern as shown on the approved plans. Prior to issuance of the first occupancy occupancy permit, an escrow account shall be established.

8.15.4 Condition: In the case of any lots to be developed independent of the Applicant, his successors or assigns, a separate bond or other security shall be required. Said bond or other security to be determined by the Planning Board pursuant to G.L. Chapter 41, Section 81-U and Section 5 of the Subdivision Rules and Regulations of the Town of Stow.

8.15.5 Condition: The Petitioner shall submit an "As-Built" Plan for the common drive and appurtenant drainage structures, prior to final release of the Performance Guarantee. Volumetric calculations of the detention basins shall be submitted with the as-built plans.

8.15.6 Finding: Section 9.3.14 of the Bylaw requires an as-built plan for each lot, prior to issuance of occupancy permit.

Condition: Prior to issuance of occupancy permit, an as-built plan, in accordance with the requirements of section 9.3.14 of the Bylaw, shall be submitted to the Board for each lot.

8.16 Condition: The Petitioner shall document the condition of West Acton Road, using methods such as photographs acceptable to the Stow Highway Department, from a point 100 feet on either side of the common drive entrance. If it is determined that the degradation has occurred, the Petitioner shall repair the identified section of the road to meet the road's pre-development condition.

8.17 Finding: The Plan does not show a sidewalk, walkway or path along the entire frontage of the Site, as required by Section 9.2.7.14 of the Zoning Bylaw. The Board finds that construction of a sidewalk elsewhere in Town would be preferable.

Plan Modification: The Plan shall be modified to show a sidewalk along the entire frontage of the Hammerhead Lots. Alternatively, the Petitioner may opt to construct a sidewalk elsewhere in Stow in a location to be determined by the Board. Or, the Petitioner may make a contribution to the Town Sidewalk fund in the sum of \$7,000.00 (\$35.00 per linear foot of frontage) for future construction of sidewalks in Stow.

Condition: If the Petitioner opts to construct a sidewalk elsewhere in Stow in a location to be determined by the Board, such construction shall be completed prior to issuance of the 4th occupancy permit.

Condition: If the Petitioner opts to make a contribution to the Town for future construction of sidewalks in Stow, such contribution shall be in the sum of \$7,000.00 (\$35.00 per linear foot of frontage). Such contribution shall be made prior to issuance of the 4th occupancy permit.

Alternatively, such contribution may be made in the form of material and/or labor. If the Petitioner opts to make the contribution in the form of material and/or labor, such material and/or labor shall be of equal value to the cash contribution and shall be approved by the Board. Such contribution shall be made prior to issuance of the 4th occupancy permit.

8.18 Finding: The Treasurer Collector advised that there are no outstanding past due property taxes

8.19 Finding: The Board of Health advised that they witnessed percolation testing and would review septic system plans at a Board of Health Meeting.

Condition: Development of the proposed Hammerhead Lots and the conventional lot shall be subject to meeting the requirements of the Board of Health.

Condition: No garbage disposal grinders shall be installed. Such restriction shall be contained in the Common Drive Covenant, Maintenance Agreement, and Homeowners Association documents and within the deed for each lot.

8.20 Finding: The Conservation Commission advised that any work within a wetland resource area will require a filing with the Conservation Commission.

Condition: This approval shall not be deemed approval by the Board of Health, the Conservation Commission, or other authority having its separate jurisdiction and inspection requirements.

8.21 Condition: All exterior lighting shall be full cutoff and comply with Sections 3.8.1.5.1 through 3.8.1.5.7 of the Zoning Bylaw and such requirements shall be referenced in the deed for each lot.

8.22 Condition: Exterior construction activity shall take place only between the hours of 7:00 A.M. and 5:00 P.M., Monday through Friday, and 8:00 AM to 12:00 PM Saturdays unless specific approval is granted by the Board. The Petitioner shall post allowable hours on site.

8.23 Finding: The approval hereby granted is based on and specifically applies to land located on West Acton Road, shown on the Stow Property Map Sheet R-20 as Parcels 17, 19, 20, 21 & 22.

8.24 Finding – The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Rules, Zoning Bylaw or other applicable laws and regulations. At the time of endorsement, the Plan must be in compliance with the Rules, except for the waivers granted herein.

8.25 Finding: In accordance with Section 6.10 of the Rules and Regulations for Special Permits, the Planning Board will conduct an annual review to ensure compliance with the conditions imposed within the Special Permits approved herein. Notification of any deficiencies found through said review will be forwarded to the Petitioner and the Homeowners' Association. Failure to rectify said deficiencies may result in rescission of the special permit or other zoning enforcement proceedings.

8.26 Finding: The Board reserves the right to go on the property to review ongoing compliance with the conditions imposed within the Special Permits approved herein.

8.27 Condition: Prior to issuance of the first occupancy permit, the Town of Stow shall inspect and deem the drainage system adequate.

- 8.28 Condition:** The Petitioner shall grant permission to agents of the Town of Stow, as said agency is determined by the Stow Planning Board, to enter, inspect and take whatever related actions are necessary
- 8.29 Condition:** This Special Permit shall lapse on April 12, 2013 if a substantial use has not commenced, except for good cause.
- 8.30 Condition:** The Special Permit granted by this decision shall not take effect until a copy of the decision has been recorded, at the owner's expense, in the proper Registry of Deeds and duly indexed or noted on the owner's certificate of title. A copy of the recorded decision, certified by the Registry, or notification by the owner of the recording, including recording information, shall be furnished to the Town Clerk and the Planning Board.

9. APPEALS

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing this decision with the Town Clerk.

Witness our hands this 12th day of April, 2011.



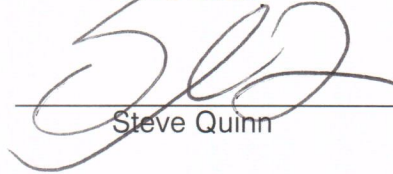
Lori Clark



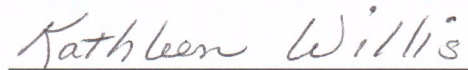
Ernie Dodd



Leonard Golder



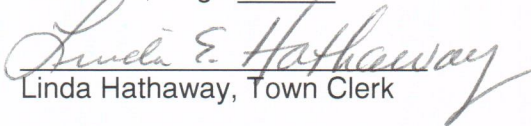
Steve Quinn



Kathleen Willis

Received and Filed

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 April 19, 2011

Linda Hathaway, Town Clerk

Date

This is to certify that the twenty (20) day appeal period on this decision has passed and there have been no appeals made to this office or that any such appeal has been resolved by judicial decree, order or stipulation of dismissal.

Linda Hathaway, Town Clerk

Date